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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,236	02/28/2005	Francesco Ferraiolo	PROVV C-24	8191
23474	7590	11/25/2005	EXAMINER	
FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1631			LEE, JONG SUK	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/526,236	FERRAILO, FRANCESCO	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jong-Suk (James) Lee	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 12-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 21 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 February 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/28/2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

1. The first and second preliminary amendments filed February 28, 2005 have been entered.  
Claims 12-21 are pending in the present application.

### ***Drawings***

2. The drawings were received on February 28, 2005. These drawings including replacement drawings for Figs. 2-6 are acceptable.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 12-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 12: The claim is not clear as to which portion is the body of the claim. In the preamble, the functional limitations, "for forming ground covering, restraining and reinforcing structures, with a front wall comprising....., a lower wall and an upper wall...." are not clearly distinguished between the preamble and the claim body. Claims 13-21 are dependent upon claim 12.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 12-20, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by PCT Publication (WO 98/38391).

PCT Publication '391 discloses a retaining/reinforcing wall element for forming ground covering, restraining and reinforcing structures, the element comprising a front wall (101) having at least one panel of electrically welded wire netting, a lower wall (301) and an upper wall (201) each comprising at least one panel of double-twist hexagonal-mesh wire netting (see Fig. 1), the front wall being connected in an articulated manner at one of its end edges at least, to an edge of the lower wall or the upper wall, the front wall is connected in an articulated manner at two of its opposite end edges to an edge of the lower wall and an edge of the upper wall respectively, wherein the upper wall has a height substantially corresponding to the height of the front wall, the element further comprising bracket means (105) adapted to support, in use, the front wall in an inclined configuration (see Figs. 1, 3 and 4) with respect to the lower wall, wherein the bracket means comprise at least one triangular bracket with a side secured in an articulated manner to the front wall, wherein a layer of geosynthetic material or bio-matting (see pg.3, 4<sup>th</sup> paragraph) is secured to the front wall, wherein the articulated connection of the front wall to the lower wall and/or the upper wall is factory-made, the element being stowed and/or transported to the place of use in a flat configuration (see Fig. 2) in which the front wall is placed on the lower

wall and/or the upper wall, wherein the front wall is connected in an articulated manner to both the lower wall and the upper wall, the element being stowed and/or transported to the place of use in a flat configuration in which the front wall and the upper wall are both placed on the lower wall, wherein the front wall is connected in an articulated manner to both the lower wall and the upper wall, the element being stowed and/or transported to the place of use in a flat configuration in which the front wall, the upper wall and the lower wall are folded and placed at least partially on top of one another in a zigzag configuration (Figs. 1-7; pg.5, 7<sup>th</sup> paragraph to pg.9).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12 and 21, as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilfiker'735 (US 5,076,735) in view of PCT Publication'391. The teachings of PCT Publication'391 have been discussed above.

Hilfiker '735 discloses a welded wire component for forming restraining and reinforcing structures, the element comprising a front wall (P3) having at least one panel of electrically welded wire netting, a lower wall (P2) and an upper wall (G2, G4) each comprising at least one panel of double-twist hexagonal-mesh wire netting, the front wall being connected in an articulated manner at one of its end edges at least, to an edge of the lower wall or the upper wall,

the front wall is connected in an articulated manner at two of its opposite end edges to an edge of the lower wall and an edge of the upper wall respectively, wherein the upper wall comprises at least two panels (G2, G4) connected in an articulated manner along a common edge substantially parallel to the edges of the front wall (see Figs. 1-3; col.3, lines 28-68; col.3, lines 1-37).

However, PCT publication'391 fails to disclose or fairly suggest the lower wall and upper wall, each comprising at least one panel of double-twist hexagonal-mesh wire netting.

PCT Publication'391 discloses a wire mesh retaining wall having the double-twist hexagonal-mesh wire netting (see Fig. 1).

Therefore, in view of PCT Publication'391, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the wire mesh netting from square shape to the hexagonal shape in order to enhance esthetic sense to the completed wall.

### ***Priority***

9. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy of the priority documents have been received in this national stage application from the international Bureau (PCT Rule 17.2 (a)).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other references cited disclose an earth retaining wall structure, a retaining wall system with wire-mesh panels and an earth structure and method with facing panels and supports.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jong-Suk (James) Lee whose telephone number is (571) 272-7044. The examiner can normally be reached on 6:30 am to 3:00 pm, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jong-Suk (James) Lee  
Primary Examiner  
Art Unit 3673

/jjl  
November 21, 2005